

M e m o r a n d u m**805.0130****To :** Mr. Gary J. Jugum**Date:** April 12, 1993**From :** John L. Waid**Subject: Application of District Tax Sales of Mobilehomes used as Residences, Factory-Built School Buildings, and Factory-Built Houses**

You note in your memorandum to me dated March 11, 1993, that special rules apply to the sale and use of factory-built school buildings (§ 6012.6), factory-built housing (§ 6012.7), and mobilehomes used as residences (§§ 6012.8 & 6012.9.) You asked how district tax applies to sales of these items under a scenario in which the dealer also installs and/or delivers the property to the site where it will be installed. This question came up during our conference with Principal Tax Auditor Glenn A. Bystrom and C--- P---, the lobbyist for the mobilehome dealers, in the context of a dealer not located in a district or located in a county with one district tax rate who purchases a mobilehome ex-tax for resale and installs it in and/or delivers it into a county with a district or a higher district tax rate than in his own county.

As you know, property shipped out of the retailer's district pursuant to the contract of sale to be principally used outside the district is not subject to the transactions tax of the retailer's district. (Reg. 1823(a)(2)(B).) The use tax of the district of destination will apply if the property was shipped from a county which had no district; there was a district but the sale was exempt from its transactions tax; the property was purchased ex-tax for resale; or the transactions tax of the county of origin applied but at a rate lower than the use tax of the destination county. (Reg. 1823(b)(1)(B)-(E).)

I note at the outset that a retailer engaged in business in a district is required to collect its use tax on a particular sale only if he delivers the property into the district or participates within the district in making the sale. (Reg. 1827(b)(1).) Thus, only the transactions tax applies if the purchaser takes delivery at the dealer's place of business and transports the property into the district himself.

I have attached copies of the statutes involved. The only one that speaks to this issue is Section 6012.6(c) which reads as follows:

“For the purposes of this section, the place of sale or purchase of a factory-built school building is the place of business of the retailer to the factory-built school building as provided in Section 7205, regardless of whether the sale of the building includes installation or whether the building is placed upon a permanent foundation.”

Regulation 1826, "Construction Contractors," was amended when Section 6012.6 was passed. Sub-division (b)(3) repeats the provisions of the statute quoted above and continues as follows:

"The district tax of the district (or districts) where the building is installed or placed will apply, if the rate of tax (or combined rate) is greater than the rate of tax in the district of sale, or if the place of sale is not in a district. See paragraph (b) of Regulation 1823 (18 CCR 1823)."

The "Informative Digest" of the "Notice of Proposed Regulatory Action" on Regulation 1826, dated March 8, 1991, indicates the amendment was proposed "to explain the provisions of Section 6012.6 as they relate to the place of sale of factory-built school buildings for transactions tax purposes." It is clear, then, that the use tax district of delivery and installation is to be applied to these transactions. Also, by their terms, the place-of-sale rules for factory-built schools apply only to local taxes. (§ 6012.6(c).)

The intent of Sections 6012.8 and 6012.9 was to put dealers purchasing mobilehomes from manufacturers on a par with contractors consuming materials to erect stick-built homes by giving the former the status of consumers and a gross receipts adjustment to approach the materials cost of the latter while keeping their retailer status for the purpose of issuing resale certificates. A similar parity between prefabricated and stick-built structures was the purpose behind the tax breaks given to dealers of factory-built schools and structures, other than housing, in Sections 6012.6 and 6012.7, but they are solely Section 6007 retailers. Regulation 1521.4 assumes that dealers in factory-built housing may buy these items ex-tax for resale. These statutes did not change our original conclusion that these items were tangible personal property. They merely adjusted the gross receipts or selling price and, in the case of dealers of mobilehomes, created a special consumer-retailer status to achieve their purpose.

Here, it is given that the dealers install in and/or deliver the property into a district and either the tax rate is higher than that in effect in the county of origin or it had no district. The applicable statutes provide for these dealers to issue resale certificates to permit them to purchase these structures free of tax. Indeed, Sections 6012.8(a) and 6012.9(a) give factory-built mobilehome dealers the dual status of consumer/retailers specifically to permit them to issue resale certificates.

This dual status is applied solely to the Sales and Use Tax Law. The language of both statutes begins with the phrase "For the purposes of this part...." The Sales and Use Tax Law is Part 1 of Division 2 of the Revenue and Taxation Code. The Bradley-Burns Uniform Local Tax Law is Part 1.5, the Transactions and Use Tax Law is Part 1.6, and Additional Local Taxes are authorized in Part 1.7. The words "this part" must refer to Part 1 alone. These statutes, then, cannot alter the status of mobilehome dealers as retailers as regards local and district taxes.

Thus, we conclude that the purchasers of these items are liable for district use tax under the provisions of Regulation 1823(b) discussed above. We also conclude that, by virtue of making regular deliveries into the purchasers' districts, the dealers are engaged in business there pursuant to Regulation 1827(c)(2). As a result, under this fact pattern, they are required to collect district use tax, if any, at the rate in effect in the districts into which they deliver and/or install these structures.

JLW:es

cc: Mr. Don Fillman
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